



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

January 24, 2013

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Damon Porter**
Tax Registry No. 912042
114 Precinct
Disciplinary Case Nos. 2009-0741, 2010-3242, 2011-3467
2011-5302, 2011-5945 & 2012-6773

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on May 02, 2012, and was charged with the following:

DISCIPLINARY CASE NO. 2009-0741

1. Said Police Officer Damon Porter, while on-duty and assigned to Transit District 3, on or about December 22, 2008, was discourteous to New York City Sergeant Patrick O'Shea, Tax No. 907663. in that said Police Officer, after being instructed to conduct a TOMS check, did become loud and boisterous toward said Sergeant. *(As amended)*

**P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONDUCT – GENERAL
GENERAL REGULATIONS**

2. Said Police Officer Damon Porter, while on-duty and assigned to Transit District 3, on or about January 2, 2009, was absent from his assignment without permission or police necessity. *(As amended)*

**P.G. 206-03, Page 1, Paragraph 1 VIOLATIONS SUBJECT TO COMMAND
DISCIPLINES
DISCIPLINARY MATTERS**

**P.G. 203-05, Page 1, Paragraph 2 PERFORMANCE ON DUTY – GENERAL
GENERAL REGULATIONS**

3. Said Police Officer Damon Porter, while on-duty and assigned to Transit District 3, on or about January 21, 2009, was absent from his assignment without permission or police necessity. *(As amended)*

**P.G. 206-03, Page 1, Paragraph 1 VIOLATIONS SUBJECT TO COMMAND
DISCIPLINES
DISCIPLINARY MATTERS**

**P.G. 203-05, Page 1, Paragraph 2 PERFORMANCE ON DUTY – GENERAL
GENERAL REGULATIONS**

4. Said Police Officer Damon Porter, while assigned as indicated in Specification #1, while on-duty, on or about and between the dates of March 18, 2009 and April 16, 2009, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Officer arrived late for the beginning of his tour on approximately three occasions, totaling time in the amount of two hours and thirty-five minutes.

P.G. 203-05, Page 1, Paragraph 1

PERFORMANCE ON DUTY – GENERAL REGULATIONS

5. Said Police Officer Damon Porter, while assigned as indicated in Specification #1, while on-duty, on or about March 19, 2009, did fail and neglect to sign return roll call, as required.

P.G. 203-05, Page 1, Paragraph 2(b)

PERFORMANCE ON DUTY – GENERAL REGULATIONS

6. Said Police Officer Damon Porter, while assigned as indicated in Specification #1, while on-duty, on or about May 2, 2009, failed to submit a paid 28 for a vacation day. Said Police Officer failed to report to work and it took one hour before he was located at his home.

P.G. 203-05, Page 1, Paragraph 1

PERFORMANCE ON DUTY – GENERAL REGULATIONS

7. Said Police Officer Damon Porter, while assigned as indicated in Specification #1, while on duty, on or about and between the dates of June 7, 2009 and June 16, 2009, at a location in New York County, was late for roll call, totaling a loss of time in the amount of three hours and twenty minutes.

P.G. 203-05, Page 1, Paragraph 1

PERFORMANCE ON DUTY – GENERAL REGULATIONS

8. Said Police Officer Damon Porter, while on-duty and assigned to Transit District 3, on or about June 28, 2009, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did fail and neglect to take his meal period from 1100 hours to 1200 hours as previously instructed. (As amended)

P.G. 203-05, Page 1, Paragraph 1

PERFORMANCE ON DUTY – GENERAL REGULATIONS

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS**

9. Said Police Officer Damon Porter, while on-duty and assigned to Transit District 3, on or about June 28, 2009, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer was observed, at approximately 1242 hours, off post and in a cooping prone location. (*As amended*)

P.G. 206-03, Page 1, Paragraph 1 VIOLATIONS SUBJECT TO COMMAND DISCIPLINES DISCIPLINARY MATTERS

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONDUCT – PROHIBITED CONDUCT GENERAL REGULATIONS

10. Said Police Officer Damon Porter, while on-duty and assigned to Transit District 3, on or about January 21, 2009, did make inaccurate entries in his memo book, to wit: said Police Officer did indicate that he was on a personal break at 0455 hours, when in fact he was observed at 0452 hours inside an MTA locker room. (*As amended*)

P.G. 203-05, Page 1, Paragraph 4 PERFORMANCE ON DUTY – GENERAL GENERAL REGULATIONS

11. Said Police Officer Damon Porter, while on duty and assigned to Transit District 3, on or about June 28, 2009, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did change his meal time without the permission of said Police Officer's supervisor. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT GENERAL REGULATIONS

12. Said Police Officer Damon Porter, while on-duty and assigned to Transit District 3, on or about and between March 18, 2009 and June 16, 2009, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer was entered into Transit District 3's Minor Violations Log ten (10) times on nine (9) different occasions. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT GENERAL REGULATIONS

DISCIPLINARY CASE NO. 2010-3242

POLICE OFFICER DAMON PORTER

1. Said Police Officer Damon Porter, while on duty and assigned to the 114th Precinct, on or about October 12, 2010, after having received a notification on October 1, 2010, to appear in Traffic Court on October 12, 2010, did fail to appear in Traffic Court resulting in the dismissal of one (1) of the cases said Police Officer was scheduled to give testimony on.

P.G. 203-03, Page 1, Paragraph 2

**COMPLIANCE WITH ORDERS
GENERAL REGULATIONS**

P.G. 203-05, Page 1, Paragraph 1

**PERFORMANCE ON DUTY – GENERAL
GENERAL REGULATIONS**

DISCIPLINARY CASE NO. 2011-3467

1. Said Police Officer Damon Porter, while on-duty and assigned to the 114th Precinct, on or about January 6, 2011, did fail to respond to a radio run assigned to said Police Officer and his partner.

P.G. 202-21, Page 1, Paragraph 8

**POLICE OFFICER
DUTIES AND RESPONSIBILITIES**

P.G. 203-05, Page 1, Paragraph 1

**PERFORMANCE ON DUTY – GENERAL
GENERAL REGULATIONS**

2. Said Police Officer Damon Porter, while on-duty and assigned to the 114th Precinct, on or about January 6, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer was out of uniform prior to the completion of his scheduled tour of duty and did attempt to sign out prior to the end of his scheduled tour of duty.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT – PROHIBITED
CONDUCT
GENERAL REGULATIONS**

3. Said Police Officer Damon Porter, while on-duty and assigned to the 114th Precinct, on or about January 6, 2011, after having been directed by New York City Police Lieutenant Michael Inserra, Tax #922535, to put his uniform back on, did fail and neglect to comply with said order.

P.G. 203-03, Page 1, Paragraph 2

**COMPLIANCE WITH ORDERS
GENERAL REGULATIONS**

DISCIPLINARY CASE NO. 2011-5302

POLICE OFFICER DAMON PORTER

1. Said Police Officer Damon Porter, while off-duty and assigned to the 114th Precinct, on or about June 9, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer having been notified to work the Third Platoon and attend training at the Police Academy, did perform his tour of duty with the Second Platoon without any authorization.

P.G. 202-21, Page 1, Paragraph 1

**POLICE OFFICER
DUTIES AND RESPONSIBILITIES**

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT – PROHIBITED
CONDUCT
GENERAL REGULATIONS**

2. Said Police Officer Damon Porter, while off duty and assigned to the 114th Precinct, on or about June 9, 2011, after having been notified to perform his tour of duty with the Third Platoon, did fail and neglect to comply with said directive.

P.G. 203-03, Page 1, Paragraph 2

**COMPLIANCE WITH ORDERS
GENERAL REGULATIONS**

DISCIPLINARY CASE NO. 2011-5945

1. Said Police Officer Damon Porter, while on duty and assigned to the 114th Precinct, on or about August 12, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did fail to report prepared for duty in that said Police Officer did appear for duty without his gun and gun belt.

P.G. 208-08, Page 1, Paragraph 1

**FIREARMS GENERAL REGULATIONS
UNIFORMS AND EQUIPMENT**

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT – PROHIBITED
CONDUCT
GENERAL REGULATIONS**

1. Said Police Officer Damon Porter, while on-duty and assigned to the 114th Precinct, on or about December 11, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer, having responded to an aided case, did fail to conduct a proper investigation.

**P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS**

2. Said Police Officer Damon Porter, while on-duty and assigned to the 114th Precinct, on or about December 11, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer, after having been told of an unusual circumstance regarding an injury with a weapon, did fail to notify and/or request the response of a supervisor.

**P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS**

P.G. 202-21, Page 1, Paragraph 6

**POLICE OFFICER
DUTIES AND RESPONSIBILITIES**

In a Memorandum dated October 23, 2012, Assistant Deputy Commissioner Robert W. Vinal, found Respondent Porter Guilty of Specification Nos. 1, 8, 9, 11 and 12, and Specification Nos. 2, 3, 4, 5, 6, 7 and 10 were Dismissed in Disciplinary Case No. 2009-0741, Respondent Porter was also found Guilty of Specification No. 1 in Disciplinary Case No. 2010-3242, Guilty of Specification Nos. 1, 2 and 3 in Disciplinary Case No. 2011-3467, Guilty of Specification Nos. 1 and 2 in Disciplinary Case No. 2011-5302, Guilty of Specification No. 1 in Disciplinary Case No. 2011-5945 and Guilty of Specification Nos. 1 and 2 in Disciplinary Case No. 2012-6773. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

Respondent Porter's misconduct in these matters warrants his separation from the Department. However, with consideration of his prior service, reason for temperance against an outright dismissal from the Department is presented and I will permit an alternative manner of separation from the Department for Respondent Porter at this time.

It is therefore directed that an ***immediate*** post-trial vested-interest retirement agreement be implemented with Respondent Porter. In consideration of such, Respondent Porter is to be suspended for thirty (30) days (he will retire upon completion of his thirty (30) day suspension period while on full-duty), be placed on One (1) Year Dismissal Probation, waive all time and leave balances, including terminal leave, if any, plus waive all suspension days, with and without pay, if any, served and to be served in these matters.

Such vested interest retirement shall also include Respondent Porter's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. If Respondent Porter does not agree to the terms of this vested-interest retirement as noted, this Office is to be notified without delay. This agreement is to be implemented ***IMMEDIATELY***.



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

October 23, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Damon Porter
Tax Registry No. 912042
114 Precinct
Disciplinary Case Nos. 2009-0741, 2010-3242, 2011-3467
2011 5302, 2011-5945 &
2012 6773

The above-named member of the Department appeared before me on May 2, 2012 and June 15, 2012, charged with the following:

Disciplinary Case No. 2009 0741

1. Said Police Officer Damon Porter, while on-duty and assigned to Transit District 3, on or about December 22, 2008, was discourteous to New York City Sergeant Patrick O'Shea, Tax No. 907663, in that said Police Officer, after being instructed to conduct a TOMS check, did become loud and boisterous toward said Sergeant. (*As amended*)

P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONDUCT -- GENERAL
GENERAL REGULATIONS

2. Said Police Officer Damon Porter, while on duty and assigned to Transit District 3, on or about January 2, 2009, was absent from his assignment without permission or police necessity. (*As amended*)

P.G. 206-03, Page 1, Paragraph 1 – VIOLATIONS SUBJECT TO COMMAND
DISCIPLINES
DISCIPLINARY MATTERS

P.G. 203-05, Page 1, Paragraph 2 – PERFORMANCE ON DUTY – GENERAL
GENERAL REGULATIONS

3. Said Police Officer Damon Porter, while on-duty and assigned to Transit District 3, on or about January 21, 2009, was absent from his assignment without permission or police necessity. (As amended)

P.G. 206-03, Page 1, Paragraph 1 VIOLATIONS SUBJECT TO COMMAND
DISCIPLINES
DISCIPLINARY MATTERS

P.G. 203-05, Page 1, Paragraph 2 PERFORMANCE ON DUTY GENERAL
GENERAL REGULATIONS

4. Said Police Officer Damon Porter, while assigned as indicated in Specification #1, while on-duty, on or about and between the dates of March 18, 2009 and April 16, 2009, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Officer arrived late for the beginning of his tour on approximately three occasions, totaling time in the amount of two hours and thirty-five minutes.

P.G. 203-05, Page 1 – PERFORMANCE ON DUTY/GENERAL
REGULATIONS

5. Said Police Officer Damon Porter, while assigned as indicated in Specification #1, while on duty, on or about March 19, 2009, did fail and neglect to sign return roll call, as required.

P.G. 203-05, Page 1, Paragraph 2(b) PERFORMANCE ON DUTY/GENERAL
REGULATIONS

6. Said Police Officer Damon Porter, while assigned as indicated in Specification #1, while on-duty, on or about May 2, 2009, failed to submit a paid 28 for a vacation day. Said Police Officer failed to report to work and it took one hour before he was located at his home.

P.G. 203-05, Page 1, Paragraph 1 PERFORMANCE ON DUTY/GENERAL
REGULATIONS

7. Said Police Officer Damon Porter, while assigned as indicated in Specification #1, while on duty, on or about and between the dates of June 7, 2009, and June 16, 2009, at a location in New York County, was late for roll call, totaling a loss of time in the amount of three hours and twenty minutes.

P.G. 203-05, Page 1, Paragraph 1 PERFORMANCE ON DUTY/GENERAL
REGULATIONS

8. Said Police Officer Damon Porter, while on-duty and assigned to Transit District 3, on or about June 28, 2009, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did fail and neglect to take his meal period from 1100 hours to 1200 hours as previously instructed. (*As amended*)

P.G. 203-05, Page 1, Paragraph 1 PERFORMANCE ON DUTY – GENERAL
GENERAL REGULATIONS

P.G. 203 10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED
CONDUCT
GENERAL REGULATIONS

9. Said Police Officer Damon Porter, while on-duty and assigned to Transit District 3, on or about June 28, 2009, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer was observed, at approximately 1242 hours, off post and in a cooping prone location. (*As amended*)

P.G. 206 03, Page 1, Paragraph 1 VIOLATIONS SUBJECT TO COMMAND
DISCIPLINES
DISCIPLINARY MATTERS

P.G. 203 10, Page 1, Paragraph 5 PUBLIC CONDUCT – PROHIBITED
CONDUCT
GENERAL REGULATIONS

10. Said Police Officer Damon Porter, while on-duty and assigned to Transit District 3, on or about January 21, 2009, did make inaccurate entries [sic] in his memo book, to wit: said Police Officer did indicate that he was on a personal break at 0455 hours, when in fact he was observed at 0452 hours inside an MTA locker room. (*As amended*)

P.G. 203-05, Page 1, Paragraph 4 PERFORMANCE ON DUTY – GENERAL
GENERAL REGULATIONS

11. Said Police Officer Damon Porter, while on-duty and assigned to Transit District 3, on or about June 28, 2009, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did change his meal time without the permission of said Police Officer's supervisor. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT
GENERAL REGULATIONS

12. Said Police Officer Damon Porter, while on-duty and assigned to Transit District 3, on or about and between March 18, 2009 and June 16, 2009, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer was entered into Transit District 3's Minor Violations Log ten (10) times on nine (9) different occasions. *(As amended)*

P.G. 203 10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED
CONDUCT
GENERAL REGULATIONS

Disciplinary Case No. 2010-3242

1. Said Police Officer Damon Porter, while on-duty and assigned to the 114th Precinct, on or about October 12, 2010, after having received a notification on October 1, 2010, to appear in Traffic Court on October 12, 2010, did fail to appear in Traffic Court resulting in the dismissal of one (1) of the cases said Police Officer was scheduled to give testimony on.

P.G. 203-03, Page 1, Paragraph 2 COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

P.G. 203 05, Page 1, Paragraph 1 PERFORMANCE ON DUTY – GENERAL
GENERAL REGULATIONS

Disciplinary Case No. 2011-3467

1. Said Police Officer Damon Porter, while on-duty and assigned to the 114th Precinct, on or about January 6, 2011, did fail to respond to a radio run assigned to said Police Officer and his partner.

P.G. 202 21, Page 1, Paragraph 8 POLICE OFFICER
DUTIES AND RESPONSIBILITIES

P.G. 203-05, Page 1, Paragraph 1 PERFORMANCE ON DUTY – GENERAL
GENERAL REGULATIONS

2. Said Police Officer Damon Porter, while on duty and assigned to the 114th Precinct, on or about January 6, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer was out of uniform prior to the completion of his scheduled tour of duty and did attempt to sign out prior to the end of his scheduled tour of duty.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED
CONDUCT
GENERAL REGULATIONS

3. Said Police Officer Damon Porter, while on-duty and assigned to the 114th Precinct, on or about January 6, 2011, after having been directed by New York City Police Lieutenant Michael Inserra, Tax No. 922535, to put his uniform back on, did fail and neglect to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

Disciplinary Case No. 2011-5302

1. Said Police Officer Damon Porter, while off-duty and assigned to the 114th Precinct, on or about June 9, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer having been notified to work the Third Platoon and attend training at the Police Academy, did perform his tour of duty with the Second Platoon without any authorization.

P.G. 202 21, Page 1, Paragraph 1 POLICE OFFICER
DUTIES AND RESPONSIBILITIES

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED
CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Damon Porter, while off-duty and assigned to the 114th Precinct, on or about June 9, 2011, after having been notified to perform his tour of duty with the Third Platoon, did fail and neglect to comply with said directive.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

Disciplinary Case No. 2011-5945

1. Said Police Officer Damon Porter, while on-duty and assigned to the 114th Precinct, on or about August 12, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did fail to report prepared for duty in that said Police Officer did appear for duty without his gun and gun belt.

P.G. 208-08, Page 1, Paragraph 1 FIREARMS GENERAL REGULATIONS
UNIFORMS AND EQUIPMENT

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED
CONDUCT
GENERAL REGULATIONS

Disciplinary Case No. 2012-6773

1. Said Police Officer Damon Porter, while on-duty and assigned to the 114th Precinct, on or about December 11, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer, having responded to an aided case, did fail to conduct a proper investigation.

P.G. 203 10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED
CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Damon Porter, while on-duty and assigned to the 114th Precinct, on or about December 11, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer, after having been told of an unusual circumstance regarding an injury with a weapon, did fail to notify and /or request the response of a supervisor.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED
CONDUCT
GENERAL REGULATIONS

P.G. 202 21, Page 1, Paragraph 6 POLICE OFFICER
DUTIES AND RESPONSIBILITIES

The Department was represented by Pamela Naples, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq.

The Department moved to dismiss Specification Nos. 2, 3, 4, 5, 6, 7 and 10 in Disciplinary Case No. 2009-741.

Respondent, through his counsel, entered a plea of Not Guilty to Specification No. 1, in Disciplinary Case No. 2009-0741; to Specification No. 3 in Disciplinary Case No. 2011-3467; and to the subject charges in Disciplinary Case No. 2010-6773.

Respondent entered pleas of Guilty to Specification Nos. 8, 9, 11 and 12 in Disciplinary Case No. 2009-0741; to Specification Nos. 1 and 2 in Disciplinary Case No. 2011-3467; and to the subject charges in Disciplinary Case Nos. 2010-3242, 2011-5302 and 2011-5945.

A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2009-741

Respondent is found Guilty of Specification No. 1. Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 8, 9, 11 and 12. Specification Nos. 2, 3, 4, 5, 6, 7 and 10 are Dismissed.

Disciplinary Case No. 2010-3242

Respondent, having pleaded Guilty, is found Guilty.

Disciplinary Case No. 2011-3467

Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 1 and 2. Respondent is found Guilty of Specification No. 3.

Disciplinary Case No. 2011 5302

Respondent, having pleaded Guilty, is found Guilty.

Disciplinary Case No. 2011 5945

Respondent, having pleaded Guilty, is found Guilty.

Disciplinary Case No. 2012 6773

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Lieutenant Michael Inserra, Sergeant Milad Khan, Sergeant Mark Costa, and retired Sergeant Patrick O'Shea as witnesses.

Lieutenant Michael Inserra

Inserra, a 14 year member of the Department, was assigned as the Integrity Control Officer (ICO) for the 114 Precinct during January, 2011.

On January 6, 2011, Inserra performed a 7:40 p.m. to 4:25 a.m. tour. At about 11:21 p.m., he was standing behind the front desk observing members of the service (MOS) who were assigned to the third platoon coming up from the locker room to sign out at the completion of their tour which ended at 11:35 p.m. At 11:29 p.m., Inserra observed Respondent coming up the stairs from the locker room wearing civilian clothing. As Respondent walked past the front desk, Inserra stopped him and told him, "You're not end of tour. You have to go put your uniform back on." Respondent stated, "No. I'm not doing that," continued walking past the front desk and then opened the door which leads to the reception area. As Respondent was about to sign out, Inserra stopped him and told him that he could not sign out until he put his uniform back on. Respondent stayed where he was and waited until 11:35 p.m. at which time he signed out and went end of tour. Inserra described Respondent's demeanor as "he could care less what I said." Inserra stated that Department procedure requires that uniformed MOS sign out in uniform at the end of their tour.

After this interaction with Respondent, the lieutenant and sergeant who were behind the desk told Inserra that they had been looking for Respondent and his partner, after their meal period ended at 11:15 p.m. because the radio dispatcher had been trying to assign them jobs but they were not answering their radio. Inserra testified that Department procedure requires that even when the end of the meal period and the scheduled end of tour are close in time, officers are still required to resume patrol at the completion of their meal period.

During cross examination, Inserra stated that he does the best he can to observe and insure that MOS sign out at the time that their tour actually ends. He agreed that it is a violation of Department procedure if a MOS does not sign out precisely at 11:35 p.m. He agreed that there are approximately 10 to 20 officers assigned to the third platoon and that any officer who does not sign out at precisely 11:35 p.m. would be subject to discipline. He agreed that there is normally a line of ten to 20 police officers waiting to sign out at approximately 11:35 p.m. or later, depending on when they return to the precinct. Inserra said that he has never seen an officer sign out while in uniform prior to 11:35 p.m. and that he has not seen a uniformed officer sign out wearing a T-shirt or any other type of street clothing, and said that if he had observed a uniformed member sign out while out of uniform, he would issue the officer a Command Discipline (CD).

He agreed that it should be a violation if a police officer signs out while in his street clothing within five minutes after 11:35 p.m., but did not recall having observed such an instance. Inserra agreed that this is the only instance where he recalled, since his assignment to the 114 Precinct, that an officer attempted to sign out while not in uniform.

Inserra said he has never observed an officer walking around the precinct 10 minutes after his meal was over when there were 20 minutes remaining until the end of his tour. He also said that there is no cutoff time whereby an officer completes his meal and does not have to resume patrol.

Before working in the 114 Precinct, Inserra was assigned to the Internal Affairs Bureau (IAB) and before working in IAB he was assigned to the 70 Precinct. While in the rank of a police officer, Inserra said he worked in the 109 Precinct for five years, and did not know if he or other officers in the 109 Precinct ever had meal periods that ended 10 to 15 minutes before their end of tour.

Inserra agreed that on January 6, 2011, Respondent was working with his partner, Police Officer Ketatos but did not know if Ketatos had received a CD for failing to respond to a radio run as he did not conduct an investigation of him. After Counsel refreshed his recollection, Inserra agreed that Ketatos did receive a CD and the resulting penalty was the forfeiture of one vacation day. Inserra agreed that typically a CD is issued to someone who tried to sign out of uniform and failed to respond to a radio run, but because Respondent was on Level 2 Monitoring, Inserra had to make notifications, as per Department procedure, to the Department Advocate's Office (DAO). DAO had Inserra prepare a Department memorandum requesting that charges be preferred since Respondent was on Level 2 Monitoring. Inserra said he needed DAO's approval before issuing a CD to Respondent since he was on monitoring but was denied.

A week after the incident, Inserra said he reviewed Respondent's Central Personnel Index (CPI) to learn Respondent's work history with the Department.

Inserra stated that on the night in question, at 11:29 p.m., he directed Respondent to put his uniform back on but did not direct him to return to patrol and agreed that he would have directed Respondent to go back out on patrol for six minutes if he was in uniform. During his position as the ICO, Inserra recalled one instance where someone was issued a CD for signing out 15 minutes early but said he did not see a CD being issued to someone for signing out five minutes early. Inserra stated that even if an officer tried to sign out at 11:34 p.m., he would not allow it and send the officer back on patrol for one minute.

He agreed that while he was working in the 109 Precinct he would sign out in uniform at 3:40 p.m. when assigned to the day tour and that there would be approximately 15 to 20 other officers who would be preparing to sign out. However he said he could not say this was true every time because sometimes he would work late handling a job and other times other officers would stay late or they would be processing arrests.

During redirect examination, Inserra agreed that while working as the ICO, he would monitor the sign out approximately three out of five days. He agreed that on any given day, officers would not sign out at 11:35 p.m. because they might have taken lost time or they might have been handling a late job. He further agreed that if he assigned a job to an officer who was going end of tour in two minutes, that officer would be required to handle the job even if it went past the officer's tour.

He stated that after an officer's tour is over, the officer has to sign out in uniform. Inserra had worked on various tours and had monitored the sign-out process on those

tours but did not encounter a situation where an officer tried signing out prior to the end of his tour in civilian attire.

Inserra testified that in addition to conferring with DAO, he also conferred with his Commanding Officer before preferring charges against Respondent. Inserra transferred out of the 114 Precinct two months after the incident.

Inserra did not recall being present at the desk when Ketatos went to sign out end of tour nor did he recall seeing Ketatos in civilian attire prior to going end of tour.

During recross-examination, Inserra agreed that if DAO had not requested charges, Respondent would have been issued a CD for failing to answer his job and for signing out in civilian attire. The penalty of the CD would have been at the discretion of the Commanding Officer and Inserra said he would not have recommended a penalty. He said that for a Schedule "A" CD, an officer can lose up to five vacation days and for a Schedule "B" CD, an officer can lose up to 10 vacation days.

During redirect examination, Inserra agreed that if he were to issue a CD to someone, he would have to first present that CD to his Commanding Officer, but did not recall an instance where the Commanding Officer upgraded a CD to charges.

During recross-examination, Inserra agreed that he never had the opportunity to recommend charges for someone instead of a CD, and in a case where someone's conduct does not fall within the criteria for a Schedule "A" or "B" CD, he would notify his Commanding Officer.

Sergeant Milad Khan

Khan, a seven-year member of the Department, was Respondent's sergeant on January 6, 2011. On that day, Khan was working from 2:50 p.m. to 11:47 p.m. and was assigned as the Desk Officer. He testified that at approximately 11:13 p.m. the radio dispatcher asked for the status of Sector I. Sector I was assigned to Respondent and Ketatos. Khan looked in the Interrupted Patrol Log and learned that they were on meal from 10:13 p.m. to 11:13 p.m., and should have resumed patrol at 11:13 p.m. Also at 11:13 p.m. Khan tried calling them on the phone but then spotted Ketatos in the roll call room.

Khan stated that approximately at 11:29 p.m. he observed Respondent walking past the front desk in civilian attire and that Inserra approached Respondent and asked him why he was not in uniform and why he did not answer his radio. Inserra then told Respondent to go back downstairs, put on his uniform and come back upstairs. Respondent said, "No."

Khan testified that on December 11, 2011, he was working from 2:28 p.m. to 11:47 p.m. and was assigned as the Domestic Violence Sergeant. Khan received a call from the Desk Officer of the 110 Precinct who informed him that a felonious assault involving domestic violence had occurred. Khan ascertained the name of the victim (later revealed as Person A) and knew who the perpetrator (later revealed as Person B) was. He went to Person B's residence, apprehended her and brought her back to the precinct. Then, at a little past midnight, Khan went to Elmhurst Hospital to visit Person A.

Person A told Khan that “he accidentally cut himself or stabbed himself.” Person A also told the same story to the officers who had responded to the scene. Person A then retracted his story and told Khan that “[Person B] who he lives with, stabbed him in the back.”

Khan later learned that the officers who had responded to Person A’s residence were Police Officers Sayan and Respondent. Khan saw that Person A’s wound was located on his back and was closed with stitches. Khan agreed that based on Person A’s wound, he probably did not stab himself in the back.

During cross-examination, Khan stated that he did not learn until today that Person A had told the responding officers that he fell onto a knife. He agreed that in some situations, a crime is determined to have occurred based on what the victim tells the police officer, but not in this instance because “the injury says otherwise.”

Khan agreed that Person A told the responding officer that it was an accident, but did not know if Person A also told the emergency medical technicians (EMS) that it was an accident because Khan did not speak to EMS nor did Person A tell Khan what he had told EMS. Khan agreed that he concluded that Person A’s injury was not an accident based on his observation of the wound and did not confer with EMS, speak to an eyewitness or speak to the responding officer.

He further agreed that in this situation it is appropriate to make a conclusion about the wound based solely on looking at it. Khan did not recall how many stab wounds he has observed and denied having received training in forensics. He agreed that other than his observation of the wound, he did not have any experience to form an opinion as to how an injury had occurred, but had guessed based on his observation. Khan acknowledged

that Person A had lied to the police but maintained that he drew his conclusion based on Person A's injury, not his words.

Khan agreed that if EMS had taken a report in which Person A told EMS that it was an accident, Person A would still be lying. Khan agreed that he would take a report in a situation where if he responded to a residence where neighbors had complained hearing loud noises and screaming and the woman who answered the door had a black eye but said that she had injured her eye playing racquetball. In such a case, and according to a recent Operations Order, the complainant would be PSNY (People of the State of New York) and he would have to take a Complaint Report if he felt that there was a crime committed. However, Khan said that the Operations Order was not in effect at the time of this incident.

Khan said he was aware that according to the Sprint Report, the job was transmitted over the radio as an accident with a knife but he did not know if the person who called 911 stated that it was an accident. Khan said that today he learned that Person A was under the influence of painkillers or drugs when he was stabbed. He said Person A, while at the hospital, was alert and able to answer questions, and based on the information he provided, Person B was subsequently arrested.

Khan did not know the result of the Person B's criminal case and was not called to testify before a grand jury.

During redirect examination, Khan stated that he was not the arresting officer in this case and did not know if the arresting officer had been called down to the District Attorney's office. He agreed that during his time with the Department, he had been on

the scene of stabbings, gunshot wounds and vehicle accidents, but did not recall how many times.

During recross-examination, Khan said that if Person A, while in the hospital had maintained that it was an accident, Khan would have directed the responding officers to prepare an Aided Report Worksheet, Complaint Report, and to notify the detective squad for further investigation. He said an Aided Report Worksheet was prepared in this instance.

Upon being questioned by the Court, Khan stated that he observed a single puncture wound on Person A's left side of his upper back.

During recross-examination, Khan said that Person A told the responding officers that he had accidentally stabbed himself in the back, but Person A did not describe to Khan how the accident had occurred.

Sergeant Mark Costa

Costa, an 18-year member of the Department, was assigned as the assistant ICO during the time of the incident involving Person A. Costa testified that in December, 2011, he was assigned to investigate Respondent regarding an aided case. He said Respondent and his partner responded to a "10-54" (aided case) where Person A was removed to Elmhurst Hospital because he had suffered a wound to his shoulder.

As part of his investigation, Costa reviewed the Aided Report Worksheet which narrated that Person A was making a sandwich and while reaching for the bread, he stumbled backwards onto a knife. Department's Exhibit (DX) 1 is the Aided Report Worksheet prepared by Respondent. Costa learned that Person A, while in the hospital,

told the hospital personnel that he had been stabbed by his wife. Since Elmhurst Hospital is located in the confines of the 110 Precinct, the hospital notified the 110 Precinct Desk Officer, who then notified the 114 Precinct.

Costa then presented all his findings to the Commanding Officer and tried to reenact the scenario that the victim described to Respondent and Sayan in order to determine if it was plausible. Costa and the Commanding Officer determined that there was no way that the injury could have been caused by falling backwards onto a knife.

Costa conducted a Department interview with Respondent during which Respondent told him that Person A told him that he was making a sandwich and fell backwards onto a knife. Costa said that a supervisor should have been called, a small crime scene should have been set up, and the detective squad should have been notified. Costa believed that Respondent told him that he did not see the knife when he was at the victim's residence.

During cross-examination, Costa agreed that Murray told EMS the same story that was written on the Aided Report Worksheet, and that Person A did not make any allegations against Person B. Person A explained to Costa that he gave the police one story and the hospital personnel another one because he was heavily medicated.

Costa agreed that Respondent's partner, Sayan, is just as culpable for the misconduct as Respondent and that it has already been determined that Sayan's conduct warrants a CD.

Costa further agreed that Respondent and his partner did not have enough information to have effectuated an arrest when they responded to Person A's residence and

that if an individual is injured and refuses to accuse someone for the injury and absent any other type of evidence, there is no cause to arrest someone.

During redirect examination, Costa agreed that when determining if misconduct is “CD level misconduct,” the misconduct itself is not the only thing that is taken into account.

Sergeant Patrick O’Shea (Retired)

O’Shea, now retired after having served 20 years in the Department, was Respondent’s supervisor when they were both assigned to Transit District 3. O’Shea testified that on December 22, 2008, he met Respondent and two other officers, at the 96 Street subway station in order to conduct a Train Order Maintenance Sweep (TOMS), which involved the officers boarding the trains that pulled into the station and inspecting for any violations, and then addressing any violations observed.

O’Shea testified that two of the officers were conducting the TOMS while Respondent was “just standing there not doing his duties.” O’Shea instructed Respondent that he had to step into the train and inspect it, not remain on the platform. After being instructed, Respondent still did not inspect the train and at one point Respondent “turned his back on the train not even looking, disregarding the train” and not boarding the train to inspect it.”

When another train pulled into the station on the opposite platform, O’Shea observed a homeless person outstretched inside the train. He signaled the conductor to hold the train while he addressed the outstretched person. O’Shea told Respondent “we are going over there because you disobeyed the last order.” O’Shea said that he and the

other two officers were on the opposite platform while Respondent remained on the initial platform. O’Shea yelled across the platform and told Respondent to come over to the opposite platform to address the outstretched person but Respondent did not come. The other officers arrested the outstretched person and the train left the station but Respondent still had not responded to the opposite platform. He said approximately five minutes had elapsed since the time he yelled across the platform to Respondent.

After the train left the station, Respondent came upstairs and was by the stairwell when O’Shea asked him why he did not come to the other platform to address the outstretched person with them. O’Shea said that Respondent then began “raising his voice yelling at me, he said you know, who do you think you are?.. who do you think you are disrespecting me, yelling at me...” O’Shea continued, “at that time I was taken back by the officer was just refusing all orders, now he is yelling at me getting in my face...I said to him, ‘calm down,’ but he remained angry and at which point he actually stepped towards me.”

Respondent stepped towards O’Shea a second time and again said, “[W]ho do you think you are?” O’Shea asked Respondent for his Activity Log and told him to return to the command. Respondent gave O’Shea his Activity Log but then just stood there “star[]ing at me...I observed his body very tense, twitching his eyes very slightly, very angrily looking at me...” O’Shea again told Respondent to calm down and return to the command, and after telling him a couple of times, Respondent complied.

When O’Shea returned to the command, he issued Respondent a CD for courtesy and said that he had never issued a CD during his nine years as a sergeant, and if it were up to him, he would have suspended Respondent instead of issuing a CD.

During cross-examination, O’Shea agreed that prior to this incident, Respondent had a quiet demeanor. He stated that if a TOMS is scheduled, it will be announced during roll call. O’Shea did not recall how the three officers were spread out during the TOMS but said that usually two officers start together and then walk in different directions. However, O’Shea did not recall if he had actually done this on the night of the incident.

O’Shea said the train with the outstretched person on it was on the opposite platform, so Respondent would have had to go down a flight of stairs, walk to the other side, and then walk back upstairs in order to reach the other side. O’Shea told the other two officers that “we are going to go over there and address the condition. We are going to the other platform...”

O’Shea told Respondent, “[C]ome over to this platform” and denied saying, “Porter get your lazy self over here.” He did not recall how many times he yelled at Respondent but admitted that it was at least once. O’Shea agreed that this was the first time Respondent had ever raised his voice or confronted him. O’Shea said the other two officers might have been standing with the prisoner while Respondent was speaking to him in a disrespectful manner. He did not recall interviewing the two officers nor did he request the ICO to interview them.

O’Shea did not recall expressing his desire to suspend Respondent to his superior officers. O’Shea also did not recall Respondent telling him that he was going to file a complaint against him. The only thing Respondent complained about was that O’Shea was yelling at him. He did not recall if the station was busy with commuters.

During redirect examination, O'Shea stated that unless there are unusual circumstances, a TOMS is scheduled during roll call, but admitted that he can go to a location and begin a TOMS on his own, but on the night of the incident, the TOMS was scheduled. O'Shea testified that if it were up to him, he would have suspended Respondent because "I never had someone stand in front of me and totally disregard orders so many times and you try to give them so many chances to do their job and disregard their orders and his boisterous behavior...I felt he was a danger..."

He said the station was loud as there was a train in the station behind him and there were a couple of tracks between him and Respondent.

Respondent's Case

Respondent called Police Officer Luis Sayan as a witness and testified in his own behalf.

Police Officer Luis Sayan

Sayan, a seven-year member of the Department, was working on December 11, 2011, with Respondent. Sayan testified that the radio dispatcher reported a job of "an aided male and nothing more really," at [REDACTED]. When Sayan arrived, EMS was already on the scene and were treating Person A in the living room area. He recalled Person A sitting down but did not know if it was on a stretcher or his personal chair.

Person A told Sayan that he had cancer and had felt dizzy before and on this occasion he was making a sandwich, felt dizzy, the knife fell behind him and then he fell

on top of the knife. He said there was a female at the scene who indicated that she was a roommate and nothing more. He had separated Person A and his roommate while questioning them, and agreed that it did not appear that Person A's roommate was coaching or intimidating him during the questioning.

The last time Sayan spoke to Person A was when Person A was in the ambulance, and Muarray maintained that it was an accident. Sayan stated that he did not feel that he should request a supervisor because "with the experience that I have and my partner we did a thorough investigation we...spoke to both parties on the scene, EMS did an investigation also." He continued, "it wasn't a rush investigation we were very thorough. We tried talking to the aided we just felt there was no need for a supervisor on scene." He said that based on what Person A said, nothing other than an Aided Report Worksheet should have been filled out.

Sayan stated that his ICO and sergeant have spoken to him but did not tell him what form of discipline he would receive. He did not receive a CD and did not get served with formal charges. Sayan's supervisors suggested that he should have requested a supervisor to scene of the incident and to do so in similar situations in the future.

During cross-examination, Sayan agreed that although "the job" was transmitted as a 10-54 "heavy bleeder," he did not observe any signs of heavy bleeding, nor did he locate the knife. Sayan said that Person B was not present in the kitchen when Person A fell on the knife.

Respondent

Respondent, an 18-year member of the Department, offered testimony in mitigation of the misconduct he pleaded guilty to having committed.

With respect to Case No. 2011-5302, Respondent testified that he was scheduled to attend training at the Police Academy from 3:00 p.m. to 11:35 p.m. (third platoon) but attended from 7:05 a.m. to 3:40 p.m. (second platoon) instead. Respondent stated that he completed the training on the second platoon so that he could “get it done earlier and have the rest of the day to myself.”

With respect to Case No. 2011-5945, Respondent testified that he was without a gun belt on August 12, 2011 because he had gone to the range on the previous day and had left his gun belt at home. He said normally he does not take his firearm or gun belt home. Respondent notified his supervisor who then assigned Respondent as the telephone switchboard operator. He asserted that “it’s happened you know, plenty of times to other officers. The common practice is officers will be on the desk that day.”

With respect to Case No. 2010-3224, Respondent admitted that on October 12, 2010, he failed to appear in traffic court because he had forgotten about the court date.

With respect to Case No. 2011-3467, Respondent stated that he was working a third platoon and agreed that his meal period was from 10:13 p.m. to 11:13 p.m. He agreed that it is customary to have a meal period that would end just before his end of tour and said that it is known as an “end of tour meal” where if the meal period ends “within a half hour of end of tour its basically your end of tour.” He asserted, “The only time you would generally go back out on patrol if you have a serious job, which is like a

robbery or an assault in progress or anything else. Any other job would be picked up by the midnight tour, which comes on at [11:15 p.m.] they would pick up that job.”

He agreed that prior to this incident, when he had an end of tour meal, his supervisor did not tell him to resume patrol after he was done with his meal period, and also agreed that he had witnessed other officers with end of tour meals. Respondent stated that he took his meal at the precinct, in the officers’ lounge, and did not respond to the job that came over the radio because he was in the rest room and did not hear the job come over. He came out of the rest room with approximately ten minutes remaining on his tour, changed into civilian attire and went upstairs to sign out with three minutes remaining on his tour; that is when he was addressed by Inserra.

Respondent testified that in the past he had signed out in civilian attire without incident. When Inserra asked Respondent to change back into uniform and sign out, Respondent said that he “just looked at him, I was shocked, never heard that before” because he had witnessed other officers also sign out in civilian attire. After Respondent looked at Inserra, Inserra said, “[A]ll right then you have to stand there until your end of tour before you sign out.” He agreed that officers sign out between 11:25 p.m. and 11:30 p.m. and that people come in “in dribs and drabs I wouldn’t say anyone is oh you know, at the desk the exact same time.”

With respect to Case No. 2009-741, Respondent testified that on June 28, 2009, he was scheduled to take meal from 11:00 a.m. to 12:00 p.m., but that he called the desk officer and requested to change the start of his meal from 11:00 a.m. to 12:00 p.m. and was given permission to do so. He stated that it is common practice to call the desk officer to request a change in meal time. Respondent said that he had requested a change

of meal time in the past and was not disciplined for it, and had also observed other officers doing the same.

He said that at 12:42 p.m. he was in a Transit Authority lunch room eating. He added that he requested a later meal period because the particular station he was working in had a diner that did not open until 12:00 p.m.

He recalled that on December 22, 2008, he was in the 96 Street subway station with O’Shea and Police Officers Cameron and Sanchez. Respondent said he was on the southbound platform about two train-car lengths away from Cameron, and O’Shea and Sanchez were further down the platform. Respondent stated that when a train pulled into the station, he stepped inside, looked around and asked the commuters if there were any problems that needed to addressed, and then stepped out.

He said that at some point, O’Shea and Sanchez went over to the northbound platform but did not instruct him to go with them. While on the northbound platform, Sanchez and O’Shea got the attention of Cameron but not Respondent because he was on the far end of the platform. Respondent, after observing Cameron walk towards the northbound platform, also began walking there, and that was when he heard O’Shea yell, “Porter get your lazy butt here.” Because there were commuters around him, he felt embarrassed. When Respondent reached the northbound platform, he told O’Shea that he was going to file a complaint against him because his comment was very unprofessional. He denied using profanity, raising his voice, tensing up or doing anything else that could be considered threatening towards O’Shea. O’Shea then asked for Respondent’s Activity Log and told him to return to the precinct because he was being discourteous.

Respondent handed over his Activity Log, walked back to the southbound platform and took the train back to the command.

Respondent filed a complaint with Lieutenant Person C but Person C “dismissed” him, so Respondent then filed a compliant with the Office of Equal Employment Opportunity (OEEO) against O’Shea and Person C. In the months that followed after this incident, Respondent said he faced “intense supervision and scrutiny.” For instance, he said that Person C would visit Respondent’s post about two to four times a night. In addition, when Respondent was on a ten-minute personal break in the precinct, Person C told him that according to the watch in the precinct, not his or PersonC’s watch, Respondent was two minutes late.

On another occasion, while Respondent was in the precinct and on meal, Person C “walks into the room once again takes my memo book and tells me I am not on meal when clearly in my book it’s noted that I should be on meal at that particular time...”

Respondent stated that he was part of a lawsuit which was filed against the Department by the Latino Officers [Association] and did receive a settlement as a result. Following the settlement, Respondent said he was “under intense scrutiny, I was given the worse assignments, I was either not allowed overtime or I was ordered to do overtime against my wishes, I had my tours changed repeatedly and just everyday there was something different.”

With regard to Case No. 2012-6773, Respondent testified that on December 11, 2011, he was on duty when he and his partner received an “aided job” over the radio. He arrived at the scene and noticed EMS treating Person A for a rear shoulder wound.

Respondent asserted that he believed Person A's story that he had accidentally backed into a knife that was laying point forward on a counter top and that Person A was compliant.

When he was asked if he felt that he should have called for a supervisor to respond to the scene, Respondent asserted, "Absolutely not. We're instructed to call a supervisor when it's an unusual occurrence. An aided is not an unusual occurrence." Respondent testified that he did not believe that he had enough evidence to determine if a crime was committed. He completed an Aided Report Worksheet for Person A and then resumed patrol.

On cross examination regarding Case No. 2009-741 Respondent recalled that two other officers were on the platform with him but he did not take any statements from them regarding the incident. Respondent was informed that the EEO complaint would not be taken under review because he was subject to Charges and Specifications.

Respondent agreed that he had been entered in the Minor Violations Log ten times and that some violations may have been issued for being late.

With respect to Specification No. 8, he said that he had a conversation with Lieutenant Hohl, but he could not recall the content of the conversation. Respondent also could not recall who he received permission from to change his meal time, and did not know if the Transit Authority lunch room was considered to be a "cooping prone" location.

With regard to Case No. 2011-5302, Respondent agreed that he was scheduled for training on the third platoon, but that he had attended training on the second platoon without notifying anyone that he was doing this.

With regard to Case No. 2010-3242, Respondent said in October, 2010, he had been assigned to the 114 Precinct for approximately one year and that he did not keep his court notifications in a calendar.

With regard to Case No. 2011-3467, Respondent agreed that if he took his meal outside of the precinct, he would have resumed patrol until the end of his tour. He did not recall if anyone knew whether he was still in the precinct after his meal period was over. He agreed that his partner informed him that a job, a “10-22” (larceny in the past) came over the radio, but by then Respondent had turned his radio off and assumed that the job had been passed to the midnight tour.

With regard to Case No. 2012-6773, Respondent said he did not observe any blood on the floor, did not go into the kitchen, and did not search for the knife.

FINDINGS AND ANALYSIS

Case No. 2009-741

Specification No. 1

It is charged that Respondent was discourteous to Sergeant O’Shea in that after O’Shea instructed him to conduct a TOMS check, Respondent spoke to O’Shea in a loud and boisterous manner. I find Respondent Guilty because I credit O’Shea’s testimony that after he told Respondent that he was not properly conducting a TOMS check if he did not physically enter the subway train, Respondent got “in my face” in “a threatening manner” and asked in an angry, raised voice, “Who do you think you are? Who do you think you are disrespecting?” I credit O’Shea’s version of this encounter because he was not shown to have any axe to grind against Respondent. On the contrary, he testified that

he had never had any previous problems with Respondent and he agreed that Respondent's demeanor was usually calm and that he was generally quiet and soft-spoken.

Respondent inadvertently corroborated O'Shea's testimony that Respondent was verbally combative. Respondent acknowledged that he had questioned O'Shea's direction to him that he return to the command. Respondent testified that when O'Shea ordered him to report back to the command, he responded by asking O'Shea, "Why?" Also, when Respondent was asked on cross-examination whether he had questioned O'Shea's direction to him to go back to the command, he answered, "Yes."

Respondent is found Guilty.

Specification Nos. 2 and 3

The Department moved to dismiss these two Specifications. The Assistant Department Advocate (the Advocate) stated that Person C, the Department's key witness, had failed to comply with the subpoena to appear to testify that was served on him, and that without Person C's testimony the Department could not prove this charge. As a result, Specification Nos. 2 and 3 are dismissed.

Specification Nos. 4 through 7

The Department moved to dismiss these four Specifications. The Advocate stated that the misconduct charged in these four Specifications is covered under Specification No. 12.

As a result, Specification Nos. 4 through 7 are dismissed.

Specification Nos. 8, 9 and 11

These three Specifications all relate to Respondent's admitted action of taking his meal period from noon to 1 p.m., even though he had been previously instructed to take his meal period from 11 a.m. to noon and even though he never received permission to change his meal time. Respondent, having pleaded Guilty to these three Specifications, is found Guilty.

Specification No. 10

The Department moved to dismiss this Specification. The Advocate stated that the Department was not able to prove this charge. As a result, Specification No. 10 is dismissed.

Specification No. 12

Respondent, having pleaded Guilty, is found Guilty.

Case No. 2010-3242

Respondent, having pleaded Guilty to the sole Specification charged under this Case, is found Guilty.

Case No. 2011-3467

Specification Nos. 1 and 2

Respondent, having pleaded Guilty to these two Specifications, is found Guilty.

Specification No. 3

It is charged that on January 6, 2011 after he was directed by Lieutenant Inserra to put his uniform back on, Respondent failed to comply with this order. I find Respondent Guilty because Khan corroborated Inserra's testimony that there were six minutes remaining until the end of Respondent's tour when Respondent walked past the front desk in civilian attire to sign out end of tour and that when Inserra directed Respondent to go back downstairs to the locker room and put on his uniform, so that he could sign out in uniform as required, Respondent said, "No."

Even if Respondent believed that Inserra was harassing him by ordering him to put his uniform back on when there were only six minutes left until the end of his tour, Respondent was required to comply with the ICO's order by returning to the locker room, putting his uniform back on, and signing out in uniform. If Respondent truly believed that Inserra's sole purpose in issuing this order was to harass and annoy him, Respondent had legal channels available to him to complain about Inserra's order post-compliance. Refusing to comply with Inserra's order was not an option that was available to Respondent.

Respondent is found Guilty.

Case No. 2011-5302

Respondent, having pleaded Guilty to the two charged Specifications, is found Guilty.

Case No. 2011-5945

Respondent, having pleaded Guilty to the sole Specification charged under this Case, is found Guilty.

Case No. 2012-6773Specification Nos. 1 and 2

It is charged that Respondent engaged in conduct prejudicial to the good order, efficiency of discipline of the Department in that, having responded to an aided case, he failed to conduct a proper investigation as to how Person A was wounded. It is further charged that Respondent, after having been told of an unusual circumstance regarding an injury with a weapon, he failed to notify a supervisor or request the response of a supervisor.

I find Respondent Guilty of failing to conduct a proper investigation based on the testimony of Khan and Costa and based on Respondent's own testimony. Respondent testified that when he arrived at the scene he noticed that EMS workers were treating Person A for a cut on the back of his shoulder. Yet Respondent asserted that he believed Person A's story that he had accidentally backed into a knife that was sitting point forward on a counter top even though counter tops are generally below shoulder level. Moreover, on cross-examination, Respondent admitted that he did not inquire about the wound, or go into the kitchen, or search for the knife that had caused the wound. Khan viewed the wound at the hospital and saw that it was on Person A's upper back.

I also find Respondent Guilty of failing to notify a supervisor or request the response of a supervisor because, based on the above cited facts, Person A's story that he

had accidentally backed into a knife was not believable. I reject Respondent's claim that there was no need for him to call a supervisor to respond to the scene because this was only an "aided" call which did not constitute an unusual occurrence. Contrary to Respondent's assertions, based on the circumstances here, this incident constituted an unusual occurrence.

Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

Respondent was appointed to the New York City Transit Police Department on February 28, 1994. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Most of the misconduct that Respondent has pleaded Guilty to having committed constitutes relatively minor misconduct which, Respondent's supervisors candidly acknowledged, would have been adjudicated at the command level as CDs if not for the volume of minor violations Respondent has committed.

However, Respondent's misconduct of being discourteous to Sergeant O'Shea, in the presence of uniformed members of the service (MOS) and civilians, by loudly questioning the order that O'Shea issued to him, and Respondent's adamant refusal, in the presence of uniformed MOS, to comply with ICO Inserra's order that he return to the locker room and put his uniform back on so that he could sign out in uniform as he was required to do, constitute serious misconduct.

The fact that Respondent felt strongly that O'Shea was improperly dealing with a homeless person who needed help and the fact that Respondent felt strongly that Inserra's order that he put his uniform back on when there were only six minutes remaining until the end of his tour constituted harassment, do not justify or even mitigate Respondent's action of addressing O'Shea in a discourteous manner on a subway platform in front of other uniformed MOS and civilians or refusing to comply with Inserra's order in front of other uniformed MOS.

Although Respondent asserted that all of these charges are the result of intense scrutiny which he has been subjected to by supervisors ever since he was a plaintiff in the Latino Officers civil suit against the Department, it does not justify disobeying a direct order issued by a supervisor or being discourteous to a supervisor.

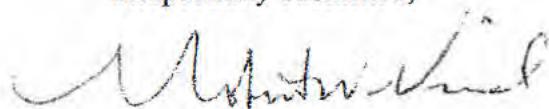
The common thread that runs through the rest of the misconduct that Respondent has either pleaded Guilty to having committed or been found Guilty of committing is that Respondent has a strong tendency to rely on and follow his own understanding of what he considers common practice rather than adhering to the letter of Departmental procedures.

The Advocate argued that Respondent should be immediately dismissed from the Department.

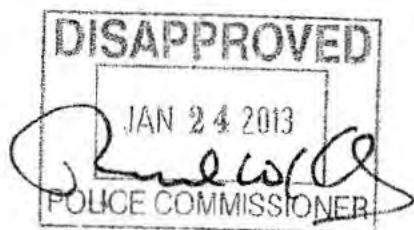
Since Respondent is an 18 year officer and since Respondent has only one previous disciplinary matter (see attached Confidential Memorandum), it is recommended that a penalty short of immediate termination be imposed.

Therefore, it is recommended that Respondent be DISMISSED from the New York City Police Department, but that the penalty of dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. It is further recommended that Respondent forfeit 45 vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

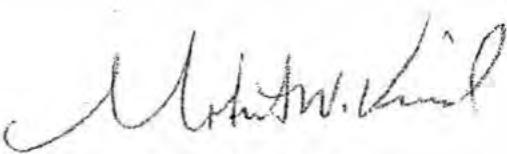
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DAMON PORTER
TAX REGISTRY NO. 912042
DISCIPLINARY CASE NOS. 2009-741, 2010-3242, 2011 3467
2011-5302, 2011-5945 & 2012-6773



He has a prior formal disciplinary record. In 2009, he forfeited eight vacation days after he pleaded Guilty to being absent from his residence without permission while on sick report on two occasions, once during 2006 and once during 2007.

On February 10, 2009, he was placed in Level 2 Performance Monitoring which ended on March 31, 2011. On March 31, 2011, he was placed in Level 3 Special Monitoring due to "Continued Poor Performance."

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials